

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Benjamin Shelton	Team: Squad #11	CCRB Case #: 202002375	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 03/09/2020 6:05 PM	Location of Incident: § 87(2)(b) § 87(2)(b)	Precinct: 103	18 Mo. SOL 9/9/2021	EO SOL 4/26/2022	
Date/Time CV Reported Tue, 03/10/2020 9:16 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 03/27/2020 12:20 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Daniel Nicoletti	05379	942271	F S S
2. DT3 Michael Harkins	00219	955974	GVSD Z1

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 James Miles	01016	944810	GVSD Z1
2. DT3 Jason Ragoo	07277	939268	GVSD Z1
3. DT2 William Warren	02757	933467	GVSD Z1
4. DT3 Christopher Vickery	07174	945079	GVSD Z1
5. DT3 Mike Civil	02114	935092	GVSD Z1
6. CPT Thomas Passolo	00000	924312	GVSD Z1
7. LT William Buchanan	00000	924993	DET BUR
8. DT3 David Teta	02666	935835	GVSD Z1
9. DT3 Carlos Velez	05575	919817	GVSD Z1
10. DT3 John Mchugh	00581	948163	GVSD Z1
11. DT2 Gerald Breiner	05638	898967	GVSD Z1
12. DT2 Jeremy Demarco	01992	930033	GVSD Z1
13. DT3 Frederick Vanpelt	01989	946357	GVSD Z1

Officer(s)	Allegation	Investigator Recommendation
A.SGT Daniel Nicoletti	Abuse: Sergeant Daniel Nicoletti entered § 87(2)(b), in Queens.	§ 87(2)(b)
B.DT3 Michael Harkins	Force: At 91-40 193rd Street, first floor, in Queens, Detective Michael Harkins pointed his gun at § 87(2)(b)	§ 87(2)(b)
C.SGT Daniel Nicoletti	Abuse: Sergeant Daniel Nicoletti searched § 87(2)(b) in Queens.	§ 87(2)(b)
D.SGT Daniel Nicoletti	Abuse: At § 87(2)(b), in Queens, Sergeant Daniel Nicoletti damaged § 87(2)(b) property.	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
E.SGT Daniel Nicoletti	Abuse: Sergeant Daniel Nicoletti entered § 87(2)(b) [REDACTED], in Queens.	[REDACTED]
F.SGT Daniel Nicoletti	Abuse: Sergeant Daniel Nicoletti searched § 87(2)(b) [REDACTED], in Queens.	[REDACTED]
G.SGT Daniel Nicoletti	Abuse: At § 87(2)(b) [REDACTED], in Queens, Sergeant Daniel Nicoletti threatened to arrest § 87(2)(b) [REDACTED]	[REDACTED]
H.SGT Daniel Nicoletti	Abuse: At § 87(2)(b) [REDACTED], in Queens, Sergeant Daniel Nicoletti threatened to notify Administration for Children's Services.	[REDACTED]
I.SGT Daniel Nicoletti	Abuse: At § 87(2)(b) [REDACTED], in Queens, Sergeant Daniel Nicoletti seized § 87(2)(b) [REDACTED] s property.	[REDACTED]
J.SGT Daniel Nicoletti	Abuse: At § 87(2)(b) [REDACTED], in Queens, Sergeant Daniel Nicoletti seized § 87(2)(b) [REDACTED] s property.	[REDACTED]
K.SGT Daniel Nicoletti	Abuse: At § 87(2)(b) [REDACTED], in Queens, Sergeant Daniel Nicoletti seized § 87(2)(b) [REDACTED] s property.	[REDACTED]

Case Summary

On March 10, 2020, § 87(2)(b) filed this complaint over the phone with IAB, generating log #20-7580. On March 27, 2020, the CCRB received this complaint.

On March 9, 2020, at approximately 6:05 p.m., § 87(2)(b) was inside his residence with his two juvenile daughters at § 87(2)(b), in Queens. Gun Violence Suppression Division (GVSD) officers entered the residence, while Det. Michael Harkins of GVSD pointed his gun at § 87(2)(b) and officers searched the residence under the supervision of Sgt. Daniel Nicoletti of GVSD (**Allegations A and C: Abuse of Authority, § 87(2)(g)**) (**Allegation B: Force, § 87(2)(g)**). Officers entered the basement of the address by breaking a lock on the door and searched it to recover a firearm (**Allegations D to F: Abuse of Authority, § 87(2)(g)**). In discussing the ownership of the firearm with § 87(2)(b) Sgt. Nicoletti allegedly told him that if § 87(2)(b) did not admit it was his, he would arrest his wife, § 87(2)(b) and contact the Administration for Children's Services (ACS) to take their children away (**Allegations G and H: Abuse of Authority, § 87(2)(g)**). Officers removed multiple pieces of property from the first floor, including an Apple watch belonging to § 87(2)(b) daughter, § 87(2)(b) and other items belonging to § 87(2)(b) from the basement (**Allegations I to K: Abuse of Authority, § 87(2)(g)**).

§ 87(2)(b) was arrested during the incident under two separate sets of offenses. Arrest report #§ 87(2)(b) reflects that § 87(2)(b) was charged with § 87(2)(b) (BR 01). Arrest report #§ 87(2)(b) reflects that § 87(2)(b) was charged with two further counts of § 87(2)(b) (BR 02).

Video for this incident was provided by the Gun Violence Suppression Division via IAB from the department cellphone of Det. Frederick van Pelt of GVSD (BR 03).

Findings and Recommendations

Allegation A – Abuse of Authority: Sergeant Daniel Nicoletti entered § 87(2)(b), in Queens.

Allegation B – Force: At § 87(2)(b), in Queens, Detective Michael Harkins pointed his gun at § 87(2)(b).

Allegation C – Abuse of Authority: Sergeant Daniel Nicoletti searched § 87(2)(b), in Queens.

Allegation D – Abuse of Authority: At § 87(2)(b), in Queens, Sergeant Daniel Nicoletti damaged § 87(2)(b) property.

Allegation E – Abuse of Authority: Sergeant Daniel Nicoletti entered § 87(2)(b), in Queens.

Allegation F – Abuse of Authority: Sergeant Daniel Nicoletti searched § 87(2)(b), in Queens.

Allegation I – Abuse of Authority: Sergeant Daniel Nicoletti seized § 87(2)(b)'s property.

Allegation J – Abuse of Authority: At § 87(2)(b), in Queens, Sergeant Daniel Nicoletti seized § 87(2)(b)'s property.

Allegation K – Abuse of Authority: At § 87(2)(b), in Queens, Sergeant Daniel Nicoletti seized § 87(2)(b)'s property.

Video taken by Det. van Pelt depicts the entire first floor and basement of § 87(2)(b) § 87(2)(b) in Queens (BR 03). The durational timestamp will be referenced. At 2:15, Det. van Pelt walks downstairs from the first-floor vestibule by the front door into a basement. The door to the

basement appears to be metal. At 2:27, he enters the basement and pans the camera around. There appears to be objects strewn around the area, as if for storage, as well as an area with pipes. No signs of the basement being a discrete dwelling, such as the presence of a bathroom or bed or kitchen, are present. No stairwell leading upstairs from the ground floor is depicted.

A Google StreetView photograph of § 87(2)(b) § 87(2)(b) shows a multi-family dwelling with two discrete entries, one on the ground floor and the other above a one-story external staircase (BR 28).

On June 22, 2021, the CCRB's Field Team visited the outside of § 87(2)(b) § 87(2)(b) and observed no markings or listings for a basement residence on the exterior of the building.

§ 87(2)(b) was the only adult inside his residence at the time of the incident (BR 04). He was in a back bedroom when he looked up and observed a group of police officers in the front living room area. Det. Harkins, the frontmost officer, pointed his gun at § 87(2)(b). Det. Harkins told him to get on the ground. § 87(2)(b) complied, and officers handcuffed him. Det. Harkins put his knee on § 87(2)(b) back while doing so, but it did not restrict his breathing or cause any discomfort. § 87(2)(b) observed officers search in the back bedroom and could not see other areas they searched as he remained in the bedroom for approximately 20 minutes. While he was handcuffed in his bedroom, officers asked him if there were firearms in the residence, which he denied. They asked if he knew the code for a padlock on a steel door at the bottom of a staircase leading from the front vestibule of the house, which led into a basement. § 87(2)(b) stated he did not have the code because someone else lived there. He continued to wait in the bedroom. He heard approximately four bangs outside of his apartment, from where he believed the basement door to be. After approximately five minutes, officers came into § 87(2)(b) bedroom again holding a firearm which they discovered in the basement. § 87(2)(b) again told them a different tenant lives in the basement. Following the search, officers presented § 87(2)(b) with a search warrant. § 87(2)(b) was taken to the 103rd Precinct stationhouse. § 87(2)(b) returned home on March 13, 2020 and learned that several items were missing from the residence including his green Nike sneakers, a black Nike jacket and a black Nike sweatshirt, as well as an Apple watch belonging to his daughter, § 87(2)(b). He observed the padlock on the basement door to be broken. § 87(2)(b) did not know the name of the basement resident.

§ 87(2)(b) declined to cooperate with the investigation by providing testimony but did state over the phone that she and § 87(2)(b) first floor apartment is separate from the basement, which is its own apartment (BR 11).

Public records database searches identified a § 87(2)(b) as a potential resident of § 87(2)(b) Queens. On April 28, 2020, § 87(2)(b) was contacted by phone and he confirmed his solo residency in the basement apartment (BR 12). He was at work at the time of the incident but had heard about it after the fact. He did not notice any damage to his door or the padlock following these allegations. His apartment did not appear to have been entered or searched by officers and he did not believe officers ever came inside. In subsequent contact attempts to retrieve a verified statement from § 87(2)(b) he did not answer calls or written correspondence and was deemed uncooperative with the investigation.

Det. James Miles of GVSD identified himself as the case officer for the investigation into § 87(2)(b) criminality surrounding this search warrant (BR 13-14). Before executing the warrant, he read the affidavit and warrant which Det. Warren had requested to verify that it was for a particular location, which Det. Miles described as the "downstairs apartment" at the incident address with a "basement that's also attached to that apartment." Det. Miles stated the basement was not another unit nor part of the general property of the building. Det. Miles was not familiar with the layout of the location before he arrived on scene but knew that § 87(2)(b) lived there as NYPD had done lengthy surveillance to establish his residence there. Det. Miles described the basement area as a storage room connected to the first-floor apartment. Det. Miles stated there was no information on the warrant clearly labeling the basement, but that the warrant location included that lower area. There were no mailboxes, doorbells, markings, or anything else that differentiated the basement from the first-floor apartment. Det. Miles was not aware of anyone solely residing in

the apartment. § 87(2)(b) never claimed a different tenant lived in the basement. As Det. Miles searched the ground floor, Det. Warren entered the basement. Det. Miles was not present for this entry. Det. Warren entered the basement because it was part of the scope of the search warrant location and thus needed to be searched. Det. Warren shouted for Det. Miles to come look at something. Det. Miles went to the basement. Det. Miles did not recall any door with locks leading to the basement. He was not aware of any forced entry into the basement. Det. Warren showed Det. Miles that he discovered narcotics and a firearm. There were also letters with § 87(2)(b)s and § 87(2)(b) names on it. There was clothing in the basement that Det. Miles stated belonged to § 87(2)(b) and § 87(2)(b) but his legal counsel did not allow him to testify to how that was established as their property due to an active criminal investigation. Det. Miles stated officers entered the basement due to the information contained within the warrant, and not due to any information gleaned during the incident. During the search of the first floor, Det. Miles recovered electronic devices, which he recalled as a laptop and a cellphone, as they pertained to the general investigation into § 87(2)(b) criminal activity. He could not divulge specifics as it related to an active investigation. However, he stated that such property would be returned to the owner if it was ruled impertinent to the investigation.

Det. Harkins stated his assignment, Shield 1, for the search warrant meant he was the first to enter (BR 05). The entry was a no-knock entry. He recalled observing § 87(2)(b) in the back bedroom upon entering the apartment and telling him to get on the ground but did not recall pointing his gun at § 87(2)(b). Det., providing security for Det. Harkins, was the sole officer to handcuff § 87(2)(b). After securing § 87(2)(b) he and Det. Warren went downstairs to the basement where there was a padlocked door. He went to the lower level since it was part of the residence, readily observed upon entry. No one directed him to the lower level, and there were no markings indicating it was a separate residence. Det. Harkins or Det. Warren used a heavy tool to open the padlock but did not recall exact manner of the forced entry downstairs. He did not recall who breached the door. The lock was broken to fully execute the search warrant. Once confirmed that no other individuals were in the basement, Det. Harkins left Det. Warren downstairs and went back upstairs to escort § 87(2)(b) for arrest processing.

Det. Warren retired before the investigation had the opportunity to interview him (BR 15).

Sgt. Nicoletti confirmed that Det. Warren located a firearm in the basement as part of the initial entry and securing of the location (BR 16). He stated the Queens Assistant District Attorney who prepared the warrant, whom he did not recall, and her supervisor explained to him that the “first floor” referenced in the warrant referred to both levels since they were part of the same residence. It was established though the investigation prior to the incident date that § 87(2)(b) resided in both levels, and no other tenants lived there. He did not recall Apple watch or other electronics being recovered and seized by officers during the incident, but stated it was possible because such devices would be linked to the investigation that led officers there in the first place and could be used to further the investigation. Officers performed the search while Sgt. Nicoletti was present and observed their actions, though he never provided specific instruction to them.

On November 15, 2021, the investigation spoke with Assistant Deputy Attorney General (ADAG) of the Queen District Attorney’s office Jonathan Sennett, supervisor of Assistant District Attorney (ADA) Diana Schioppi, the ADA assigned to GVSD’s investigation related to this search warrant. He was unable to disclose details of the affidavit submitted to secure the warrant as it was under seal by the courts. However, he reviewed the affidavit himself and stated that, concerning the basement area, it was his understanding that officers legally entered the basement under the scope of the warrant as it was established that there was direct access from, and only from, the first-floor apartment. ADAG Sennett believed the first-floor apartment included the basement. He did not believe officers acted outside the scope of the areas specified in the warrant.

Search warrant § 87(2)(b), dated § 87(2)(b), requested by Det. Warren and signed by the Honorable § 87(2)(b), permitted officers to enter the first floor of § 87(2)(b) Street in Queens without knocking and search for cocaine, controlled substances, narcotics, paraphernalia including

but not limited to plastic bags and scales, records of controlled substances transactions, records of ownership of controlled substances, and such United States currency as used to purchase controlled substances and/or which represent the proceeds of controlled substances trafficking (BR 06).

The pre-execution plan for search warrant #§ 87(2)(b) lists Sgt. Nicoletti as the entry and search supervisor (BR 07). The plan notes a potential hazard as weapons within the home.

Multiple property vouchers under § 87(2)(b) name were prepared on the incident date, all approved by Sgt. Nicoletti (BR 08), including arrest evidence invoices #§ 87(2)(b) listing multiple articles of clothing including socks, Nike sneakers, and a Nike sweatshirt recovered from the master bedroom on the first floor as well as a debit card belonging to § 87(2)(b) and shorts and a Nike jacket from the basement. Additional vouchers included invoice #§ 87(2)(b) listing sweatpants and papers, invoice #§ 87(2)(b) listing papers, invoice #§ 87(2)(b) listing a firearm with a magazine and cartridges, and invoice #§ 87(2)(b) listing various narcotics, all recovered from the basement and vouchered as arrest evidence. Invoice #§ 87(2)(b) records an Apple watch under § 87(2)(b) name that was recovered from the first floor as investigatory evidence. All clothing was seized for containing various contraband.

Officers who have obtained a valid search warrant are permitted to enter the premises listed on that warrant and conduct a full and thorough search for contraband Criminal Procedure Law Articles 690.50 (BR 09). Items not listed in a search warrant may be seized during execution of such warrant if there exists a nexus between that item and criminal behavior, and the seizing agents must have probable cause to believe that the evidence sought will aid in a particular apprehension or conviction. In other words, to seize an unspecified object, it must be immediately apparent that the object relates to criminal activity United States v. Reyes, 2007 U.S. Dist. LEXIS 7639 (2007) (BR 17).

An officer can point his firearm so long as he has a reasonable fear for his own or another's personal safety (BR 10). The determination as to when that exercise of discretion rises to the level of misconduct must be made by assessing the reasonableness of the officer's actions in the totality of the surrounding circumstances Police Department v. Gliner, OATH Index 955/00 (2000).

§ 87(2)(g)

§ 87(2)(g)

Allegation G – Abuse of Authority: At § 87(2)(b), in Queens, Sergeant Daniel Nicoletti threatened to arrest § 87(2)(b)

Allegation H – Abuse of Authority: At § 87(2)(b), in Queens, Sergeant Daniel Nicoletti threatened to notify Administration for Children's Services.

§ 87(2)(b) stated that, after officers presented him with the firearm they found in the basement, he asked them multiple times how he could be blamed for something that was not even found in his apartment. An officer identified via investigation as Sgt. Nicoletti, spoke with § 87(2)(b) about the firearm, and told him repeatedly that he should admit the gun was his. § 87(2)(b) continuously denied it was. Sgt. Nicoletti told him, “Tell me something to make me feel more comfortable, and we won’t involve anyone in this situation.” Sgt. Nicoletti told him that if he did not confess the firearm was his, “We’ll lock your wife § 87(2)(b) up when she comes home... we’ll contact ACS, take your kids and put them through the system.”

All officers interviewed either denied or did not recall hearing the alleged statements made by Sgt. Nicoletti (BR 18-24). Sgt. Nicoletti only recalled informing § 87(2)(b) of the recovered firearm and asking if he claimed ownership. § 87(2)(b) was silent in response, and Sgt. Nicoletti recalled no conversation with § 87(2)(b) in trying to coerce him to admit the firearm was his. He denied threatening to arrest § 87(2)(b) or to contact ACS.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 25).
- Sgt. Nicoletti has been a member-of-service for 15 years and has been a subject in eight other CCRB complaints and 25 other allegations, of which two were substantiated (see officer history):
 - 202004222 involved substantiated allegations of force with an asp or baton and a misleading official statement against Sgt. Nicoletti. The Board recommended Charges and the NYPD has yet to impose discipline.
 - § 87(2)(g)

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of March 12, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (BR 26).
- § 87(2)(b)

Squad: 11

Investigator: Benjamin Shelton
Signature

Supv. Inv. Benjamin Shelton
Print Title & Name

11/24/2021
Date

Squad Leader: Edwin Pena IM Edwin Pena 11/24/21
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date